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NEW DELHI, TUESDAY, JULY 14, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

*New Delhi, the 1st July, 1953*

**S.R.O. 1383.**—Whereas the election of Shri Pritam Singh, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union from the Bhatinda Sadar Constituency of that Assembly (now dissolved) has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Faqir Chand, son of L. Surasthi Dass, President, City Congress Committee, Bhatinda;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has in exercise of the powers conferred on it by section 109 of the said Act, granted leave to Shri Faqir Chand to withdraw the said petition;

And whereas the said Tribunal has, in pursuance of the provisions of clause (c) of sub-section (3) of section 110 of the said Act, allowed Shri Pritam Singh Dhillon, son of S. Kheta Singh, Village Gudra, P.O. Sangat to be substituted as a petitioner in place of Shri Faqir Chand;

And whereas the said Tribunal has, in pursuance of the provisions of section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL BARNALA

ELECTION PETITION No. 196 of 1952

BHATINDA SADAR CONSTITUENCY

**CORAM:**

Shri Jagjit Singh, M.A., LL.B.—*Chairman.*

Shri Shiva Gopal Mathur, B.A., LL.B.,

Shri Dalip Singh Jain, M.A., LL.B.—*Members*

Faqir Chand son of L. Surasthi Dass, President, City Congress Committee, Bhatinda—*Petitioner*

*Versus*

1. S. Pritam Singh son of S. Narain Singh, Retired Revenue Commissioner, Taqia Rahimshah, Patiala.
2. S. Ajmer Singh, village Chak Kharaksinghwala *alias* Doomwahi, Post Office, Sangat.
3. Shri Chiranji Lal, Advocate, Bhatinda.

4. S. Gurbachan Singh, Chak Ruldusinghwala, Post Office Sangat.
5. S. Gurnam Singh, Vice President, Tehsil Congress Committee, Bhatinda.
6. S. Pritam Singh son of Kheta Singh, village Ghudda, P.O. Sangat.
7. S. Maluk Singh, village Chak Ruldusinghwala, P. S. Bhatinda.
8. S. Uttar Singh, village Chak Ruldusinghwala, P. S. Bhatinda.
9. S. Rur Singh, village Behman Dewana, P.O. Bhatinda.
10. Shri Bhagwan Dass son of Seth Harditta Mal, Municipal Commissioner, Bhatinda.
11. S. Joginder Singh son of Dhanna Singh, Bhatinda—*Respondents*.

**PRESENT:**

Shri Pritam Singh Sidhu respondent No. 1 with his counsel Shri Muni Lal Kalia, and

Shri Maluk Singh respondent No. 7.

**JUDGMENT**

1. During the last general elections Shri Pritam Singh Sidhu was declared to have been elected to the Legislative Assembly of Patiala and East Punjab States Union from Bhatinda Sadar Constituency. An election petition was filed by Shri Faqir Chand, whose nomination papers were rejected on the ground that being an assessor he was holding an office of profit under the Government of Pepsu State and was as such disqualified for being chosen as, and for being, a member of the Legislative Assembly.

2. The election of Shri Pritam Singh Sidhu was called in question on two grounds. Firstly the petitioner asserted that the improper rejection of his nomination papers had materially affected the result of the election. Secondly that successful candidate, who was made a party to the election petition as respondent No. 1, was stated to have been guilty of a corrupt practice rendering his election to be void.

3. According to the particulars of the alleged corrupt practice, as given in election petition and the list accompanying it, Master Tara Singh was agent of the respondent No. 1 and with his connivance published a poster under his signature, which was freely distributed on 9th and 10th of January in certain villages. This distribution of the poster was also said to be with the connivance of the respondent No. 1 and at his command.

4. The poster objected to by the petitioner was alleged to have interfered with the free exercise of electoral right inasmuch as it held out a spiritual hope to voters by making an exhortation that a vote for the respondent No. 1 was tantamount to casting vote in favour of "Guru".

5. The petitioner, therefore, prayed that the election from Bhatinda Sadar Constituency, held in 1952, be declared wholly void.

6. Besides Shri Pritam Singh Sidhu ten other persons were joined as respondents. The election petition was, however, contested by him alone. Shris Amar Singh, Gurnam Singh, Pritam Singh Dhillon and Maluk Singh (respondents Nos. 2, 5, 6 and 7) also filed their written statements but afterwards absented themselves. *Ex parte* proceedings were taken against them as well as the other respondents who did not appear in spite of service.

7. The contesting respondent pleaded that the nomination papers of the petitioner were rightly rejected as being an assessor amounted to holding an office of profit under the Government of the State and that in any case the result of the election was not materially affected. All the allegations regarding the poster were denied. It was specifically stated that Master Tara Singh was neither his agent nor was any poster exhorting voters to vote for him, in the name of Guru or God, was published or distributed in the villages mentioned in the petition and the list of particulars. Certain additional objections were also taken. The election petition was contended not to be in conformity with the provisions of sections 81 and 83 of the Representation of the People Act, 1951. The returns of election expenses filed by the petitioner and respondents Nos. 2 to 7 were described as false in material particulars and not to have been lodged with the proper authority as required by the Rules. Defect of non-deposit of security by the petitioner, as required under Section 117 of the Representation of the People Act, 1951, was as well pointed out. Lastly the petition was resisted as being collusive, *mala fide*, and a sort of Benami one brought at the instance of respondents Nos. 2, 3 and 6.

8. In their written statements Shri Ajmer Singh, Gurnam Singh and Pritam Singh Dhillon (respondents Nos. 2, 5 and 6) supported the petitioner. Maluk Singh's written statement, on the other hand, favoured the position taken up by the respondent No. 1.

9. From the pleadings the following eight issues were framed:—

1. Whether the position as an assessor does not amount to holding an office of profit as described in clause (1) (a) of Art. 191 of the Constitution of India and consequently was the rejection of the petitioner's nomination papers by the Returning Officer improper and what is its effect?
2. Whether M. Tara Singh acted as an agent of respondent No. 1 and published a poster and was that poster distributed in different villages with his (Shri Pritam Singh Sidhu respondent No. 1) connivance and at his command and did that amount to undue influence and corrupt practice and with what effect?
3. Whether the petitioner did not deposit security as required by Section 117 of the Representation of the People Act, 1951, and the petition is liable to be dismissed on that ground?
4. Whether the petition is not in conformity with the provisions of Sections 81 and 83 of the Representation of the People Act, 1951, and if so, what is its effect?
5. Whether the election tribunal is competent to try the objections raised by the respondent No. 1 regarding the defective filing of the returns of the election expenses by the petitioner and respondents Nos. 2 to 7 and their being false in material particulars?
6. Whether the returns of the election expenses made by the petitioner and respondents Nos. 2 to 7 were not lodged before the proper authority and were false in material particulars and as such they are likely to be disqualified from voting at any election for a period of five years?
7. Whether the petition is collusive and *mala fide* and, if so, what is its effects?
8. To what relief the petitioner is entitled?

10. Issue No. 5 was treated as preliminary one and was decided before evidence on other issues was taken. Our order in that connection has been attached at the end of this judgment.

11. Before findings on the remaining issues are given it will be proper to mention certain developments which took place during the trial of the election petition. Evidence from the petitioner's side was completed on 18th February, 1953 and 30th of that month was fixed for witnesses of the respondent No. 1, being summoned. Through a proclamation dated 5th of March, 1953, issued by the President of India, the Legislative Assembly of Patiala and East Punjab States Union was dissolved and President's rule was introduced in the State. On the 16th of March the counsel for the petitioner applied for withdrawal of the election petition. After necessary formalities the application for withdrawal was granted on 27th of March. As required by clause (b) of Sub-section (3) of Section 110 of the Representation of the People Act, 1951, notice of the withdrawal was published in the Official Gazette of the State in its issue dated 29th March 1953. Within fourteen days of the publication Shri Pritam Singh Dhillon (respondent No. 6) applied for being substituted as a petitioner. As he fulfilled the conditions of clause (c) of sub-section (3) of Section 110 he was substituted as a petitioner by our order dated 21st April, 1953. The trial of the petition was then continued from the stage it was before the withdrawal application was submitted. After the evidence of the respondent No. 1 was taken the arguments of the counsel for the substituted petitioner and the respondent No. 1 were heard.

12. Now we come to the issues.

13. Issue No. 1.—In two other election petitions (Nos. 127 and 159, decided on 13th May and 28th May, 1953 respectively) this Tribunal had occasion to consider the question whether an assessor holds an office of profit under the Government of a State so as to disqualify him from being chosen as, and for being, a member of the Legislative Assembly of a State. After considering all the aspects of the matter we had held that an assessor does not hold an office of profit under the Government of India or the Government of any State and is not disqualified under Art. 191 (1) (a) of the Constitution of India. Recently the Election Tribunal Bhopal also took the same view in a case reported in the Government of India Extraordinary Gazette No. 6, dated 6th January, 1953.

14. The counsel for the petitioners did not at all argue this issue before us and accepted the position that an assessor does not hold an office of profit in terms of the disqualification mentioned in Art. 191(1) (a) of the Constitution of India. The position is also so clear that it does not require any lengthy discussion. Assessors are selected in accordance with the provisions of Sections 319 to 324 of the Code of Criminal Procedure. In other words the law of the country imposes a liability on all male persons between the ages of 21 and 60 to serve as assessors, when called upon, at any trial held within the district in which they reside or within such smaller area as may have been fixed by the State Government. In the case of certain categories of persons exemption has been allowed from serving as assessors under Section 320 Cr P C. Neither the selection of assessors nor their acting in that capacity depends upon the consent of the individuals concerned. Assessors also do not enjoy any advantages, monetary or otherwise. They are merely paid bare travelling allowance and a small amount not exceeding Rs. 5 per diem for the days they actually act as assessors by way of subsistence allowance (*vide* Rules sanctioned by the High Court of Pepsu State for payment of travelling and subsistence allowance to assessors). That subsistence allowance, too, is not a source of income or profit but is paid to assessors for enabling them to meet the minimum expenses of their food etc for the days of their attendance. The opinion given by assessors is also not binding on a Sessions Judge. Thus by no stretch of imagination an assessor can be considered to be holding an office of profit which may operate as a bar to such a person being chosen as, and for being, a member of the Legislative Assembly of any State.

15 So it only remains to be considered as to what was the effect of the rejection of the nomination papers of Shri Faqir Chand petitioner. He had filed two nomination papers from Bhatinda Sadar Constituency. Both the nomination papers (marked P 1/A and P 2/A) were rejected by the Returning Officer. A copy of the order (Ex P 3) of the Returning Officer, dated 1st December 1951, was produced from the petitioner's side. Except that the petitioner was an assessor there was no other objection against his candidature and on this ground alone his nomination papers were rejected.

16 Evidently the order of the Returning Officer was improper and illegal. The nomination papers of the petitioner having been improperly and illegally rejected the result of the election was materially affected.

17 It was urged before us that the petitioner had applied for Congress ticket which had not been given to him and in accordance with a pledge given by him he would not have contested election against the Congress Candidate i.e., Shri Gurnam Singh respondent No 5. There is not much of force in this contention of the learned counsel. Shri Faqir Chand stated that in case his nomination papers had not been rejected he would have contested election as an independent candidate even after resigning from the Congress Party, if necessary. When a nomination is illegally rejected a strong presumption arises that the result of election has been materially affected. If at all this presumption is capable of being rebutted it will require the most conclusive kind of evidence. In this case there is no evidence worth the name from which we may hold that even though the petitioner's nomination papers were improperly and illegally rejected, yet the result of the election was not materially affected. We accordingly hold that the nomination papers of the petitioner were improperly and illegally rejected by the Returning Officer and due to that the result of the election has been materially affected. The issue is, therefore, decided in favour of the petitioner.

18 *Issue No 2.*—This is the only controversial issue in this case. From the opposite sides some oral as well as documentary evidence was produced. Its consideration will however, be greatly facilitated if the allegations contained in the election petition and the list of particulars accompanying it, in respect of the points covered by this issue, are stated with somewhat greater detail.

19. On 9th and 10th of January, 1952, a poster, under signature of Master Tara Singh was said to have been published and distributed with the active connivance of the respondent No 1 exhorting voters to vote for Shri Pritam Singh Sidhu as a vote casted in his favour was a vote in favour of Guru. Master Tara Singh was described as the Chief leader and soul of Shromani Akali Dal and to be an agent of the respondent No 1, who was the "Official candidate" of that party from Bhatinda Sadar constituency for the Legislative Assembly of the State. According to para 8 of the election petition these posters were freely distributed and posted in villages Siviya, Mehta, Baluana, Kot Shamir, Kartar Singhwala and Khudda.

20 In the list of particulars almost the same details were repeated but the act of publishing the poster, with the connivance of the respondent No 1, was attributed to Master Tara Singh. In the names of villages where these posters were alleged to have been freely distributed some changes were made as compared with those mentioned in the petition. Villages Sivian, Kot Shamir, Chak Ruldu Singhwala, Mehta, Balluana and Chuga were only specified. It will thus be seen that in the list accompanying the election petition villages Chak Ruldusinghwala and Chagu were newly added while names of Kartar Singhwala and Khudda were dropped. Village 'Sivya' was also spelled as 'Sivian'. Further more the distribution of posters in these villages instead of being with the "active connivance" of the respondent No 1 was stated to be with his connivance and command—probably the word "command" being used as a synonym for the expression "active connivance".

21 Both according to the petition and the list of particulars the poster had the effect of interfering with the free exercise of their electoral right by the voters of the constituency.

22 The different implications of the issue are, therefore, as follows.—

- (i) Master Tara Singh was an agent of Shri Pritam Singh Sidhu.
- (ii) A poster under signature of Master Tara Singh was issued.
- (iii) The poster was published by Master Tara Singh.
- (iv) On 9th and 10th of January the poster was published and distributed in the villages whose particulars were given in the list accompanying the election petition.
- (v) The publication and distribution of the poster was with the active connivance or command of the respondent No 1.
- (vi) The poster had the effect of interfering with the free exercise of their electoral right by voters of the constituency.
- (vii) The respondent No 1 was, due to all or any one of the above mentioned acts, guilty of a corrupt practice.

23 During his arguments Shri K. N. Tiwari counsel for the substituted petitioner, frankly admitted that he had failed to prove that the poster in question was issued under signature of Master Tara Singh or he had any hand in its publication or distribution.

24 Two copies of the poster in question were produced, one along with the election petition and the second one with the written statement of Shri Pritam Singh Dhillon filed before he was substituted as a petitioner. These posters are marked as Ex P 4 and Ex P 4/1 and are exactly similar. The posters have a heading "Message of Master Tara Singh General of the Panth". Below that there is photostat reproduction of a message purporting to be signed and in the handwriting of Master Tara Singh. On opposite sides of the message there are photos of Master Tara Singh and Shri Pritam Singh Sidhu. In the message an appeal has been made to voters to make Shri Pritam Singh Sidhu successful from Bhatinda Sadar constituency and thereby obtain the blessings of "Guru Ghar". On the upper end of each of the posters was posted a leaflet showing a picture of Jathedar Sampuran Singh Raman, another leader of Akali Dal Party, and marks of bow and arrow.

25 No reliable evidence was produced before us to show that this photostat portion was in fact the reproduction of any message which may have been written and signed by Master Tara Singh. Shri Pritam Singh Dhillon had appeared as a witness (P.W. 4) on behalf of Shri Faqir Chand. In his statement he mentioned that he could identify the signature and writing of the photostat portion as that of Master Tara Singh, whom he had been seeing writing on many occasions. As against this Shri Pritam Singh Sidhu was equally emphatic that he was familiar with the handwriting and signatures of Master Tara Singh and that the portion in question did not resemble the writing or signature of Masterji.

26 Before it could be said with any degree of certainty that the message embodied in the poster was a photostat reproduction of the one given by Master Tara Singh in his own handwriting and under his signature the original one should have been sent for from the press. That was not done and not the slightest material was brought on the record to connect the message or any other part of the poster with Master Tara Singh. Regarding the publication or distribution of the poster by Masterji there is not an iota of evidence from the petitioner's side.

27 When no connection whatsoever has been established between the poster and Master Tara Singh the question whether he could be regarded as an agent of the respondent No. 1, loses all importance and need not be considered

28 The next thing to be seen is whether the poster was published and distributed on 9th and 10th of January, 1952, in the villages whose names were given in the list accompanying the election petition

29 The petitioner's entire evidence consists of his own statement and the statements of Gurnam Singh and Pritam Singh Dhillon (PWs 3 and 4)

30. The petitioner did not see any posters being published or distributed in any villages. He merely stated about seeing some posters pasted on cars of the respondent No 1 at Bhatinda. That remark of the petitioner was made casually during cross examination and does not appear to be based on veracity. If he had really seen on cars of the respondent No. 1 posters, similar to the one attached by him with his election petition, he could not have failed to mention it in the petition or the list of particulars. As a matter of fact Bhatinda is conspicuous by its absence from the list of places where the poster was alleged to have been published or distributed.

31 Gurnam Singh was the rival candidate of the respondent No 1. He had fought election on the Congress ticket but failed to secure the largest number of votes. He deposed about seeing posters similar to those marked as Ex P 4 and Ex P 4/1 affixed in village Naiwala, Kot Shamir, Shiviyan and Ghudda. He added that he saw these posters ten or twelve days before the commencement of polling but could not say as to who got them pasted.

32. The polling started for Bhatinda Sadar constituency on 15th January, 1952. That fact was admitted by Shri Pritam Singh Dhillon in his statement and is also evident from certified copies of Forms No 14 (Ex R/2 to R/7), produced from the respondent's side. In order that the witness could see these posters affixed in villages ten or twelve days before the commencement of polling the publication and distribution should have been made on 3rd or 5th of January. In the election petition dates for publication and distribution are specified as 9th and 10th of January. It follows that no posters could have been seen by Gurnam Singh about the period mentioned by him.

33 Shri Pritam Singh Dhillon (P.W. 4) similarly stated about seeing posters at villages Ghudda, Baluana, Ghuga and Kot Shamir 8 or 10 days before the commencement of polling. That, too, appears to be false for eight or ten days period before starting of polling corresponded to 5th or 7th of January.

34 The reason why this gentleman took the trouble of supporting the petitioner in his allegations against the respondent No 1 is not far to seek. He had applied for Akali Party ticket but Shri Pritam Singh Sidhu got that in preference to him. He did not take that decision calmly but expressed his resentment by making a demonstration with black flags in the meeting addressed by Master Tara Singh, a prominent member of the Akali Party. Evidently not much of love could have been lost between him and the respondent No 1 and there is nothing surprising in his coming forward as a person who saw the posters affixed in different villages.

35 In connection with these witnesses their evidence cannot at all be considered so far as the villages not mentioned in the list of particulars are concerned. In the case of an alleged corrupt practice full particulars have to be given in a list accompanying the election petition containing as full a statement as possible as to the names of the parties who committed that and the date and place of its commission (*vide* Section 83 (2) of the Representation of the People Act, 1951). These provisions of law are most salutary. It avoids fishing out of evidence by the petitioner and safeguards the rights of the party who comes to the court to defend the seat from being taken by surprise. In election Petition No 195 of 1953 (Shri Bhagwan Singh *Versus* Dr Raghbir Parkash and others) this aspect of the matter was discussed by us. The relevant portion of our order in that case was to the following effect —

"The provisions of Sub-section (2) of Section 83 are mandatory. It is thus obligatory that the petition should be accompanied by a list setting forth full particulars of the alleged corrupt practice. In the absence of such a list the allegation regarding that particular corrupt practice should not be tried."

36 So the statements of the petitioner and his witnesses regarding what happened in their presence at Bhatinda, Naiwala or Ghudda (as these places were not

mentioned in the list of particulars) cannot be taken into account while judging whether or not the alleged corrupt practice was committed by the respondent No. 1 or by any other person with his knowledge or connivance or command.

37. From the side of the respondent No. 1, Hari Singh son of Waryam Singh, Darbara Singh, Hari Singh son of Hardit Singh, Sant Singh, Hakam Singh, Gamdoor Singh, Dyal Singh son of Gurdit Singh, Pritam Singh, Inder Singh, Hardam Singh, Kehar Singh, Dyal Singh son of Hazara Singh and Bachan Singh, were produced. The respondent No. 1 also deposed on his own behalf Hari Singh son of Waryam Singh is of village Ghudda. Darbara Singh and Hari Singh son of Hardit Singh are of village Kartarsinghrwala. Santa Singh and Hakam Singh are of village Kotshamir. Dyal Singh son of Gurdit Singh and Pritam Singh are residents of Balluana. Hardam Singh and Inder Singh are of village Chuga. Kehar Singh and Dial Singh son of Hazara Singh belong to village Sivian. Gamdoor Singh and Bachan Singh were polling agents of the respondent No. 1 and happened to visit different villages in the constituency. All of them stated that they never saw any posters resembling Ex. p.4 or p.4/1 in any village.

38. The evidence of the respondent's witnesses was criticised on the ground that it was of a negative character and it is possible that the posters may have been distributed and posted in the villages when these witnesses may have either gone to their fields or to some other place. That may be right, but all the same it is matter worth considering that while from the respondent's side some persons belonging to the villages where the posters were said to have been freely distributed, and who are unconnected with the parties, could be produced while the petitioner could not find a single independent man who may have deposed in his favour. Even if the respondent's evidence is altogether ignored the matter stands where it was for the case has ultimately to be decided on the strength of the petitioner's evidence and not the weakness of the evidence adduced from the other side.

39. The above discussion leads to the irresistible conclusion that the publication or distribution of posters on 9th and 10th of January at the villages named in the list of particulars or for that matter in the election petition has not been at all established.

40. Suppose the publication or the distribution of the posters in some villages is presumed for the sake of argument, the next thing to be determined would whether that was done with the connivance or knowledge or command of the respondent No. 1. Again it has to be said that there is absolutely no evidence on the point. Gurnam Singh clearly stated that he did not know who had got the posters affixed in different villages. Pritam Singh Dhillon (P.W. 4) did say about the respondent No. 1 giving a poster to Arjan Singh for affixing at the village gate at Ghudda. We have already pointed out that this part of the statement of this witness cannot be taken into consideration for Ghudda is not one of the villages mentioned in the list of particulars. Moreover, in his written statement Shri Pritam Singh Dhillon had attributed the act of affixing posters to the respondent No. 1 personally and not to Arjan Singh. He has, therefore, been changing his version and his evidence has to be discarded as biased and probably perjured. There being no other evidence it will have to be said that the distribution and publication of the poster with the knowledge or connivance or command of the respondent No. 1 has not been proved.

41. It was argued before us that from circumstantial evidence it can be presumed that the poster must have been published and distributed either under the direct orders or instructions of the respondent No. 1 or at least with his knowledge and connivance. In this respect the following circumstances were mentioned:—

- (a) It could not be in the interest of any other candidate except the respondent No. 1 to get posters similar to those marked as Ex. P4 and P4/1 distributed and circulated in the villages of his constituency.
- (b) During election days Master Tara Singh had admittedly come to Mandi Sangat and appealed to his audience to support the candidates put up by the Akali party.
- (c) The respondent No. 1 must have tried to take advantage of the visit of Master Tara Singh to circulate a poster containing either a genuine message of Masterji or one which would appear to be on his behalf.
- (d) The respondent No. 1 admitted in his statement that he did get some leaflets printed but did not produce any one of them.

- (e) The poster mentioned as Ex. P4/1 has marks of paste or gum which will show that it must have been removed from a wall where it was affixed.
- (f) A copy of the poster was attached to the election petition showing that such posters were in existence at least when the election petition was presented.

42. Circumstantial evidence is certainly a good type of evidence and in some cases may be conclusive and preferable to ordinary oral evidence, which after all may be perjured. But before a particular inference can be drawn from circumstantial evidence alone care should be taken to see that it is not capable of any other plausible explanation or interpretation. Taken in that light the circumstantial evidence in this case is of the poorest kind.

43. There being no reliable evidence that posters, similar to those produced by the petitioner and the substituted petitioner were in fact seen in any villages of the constituency during election days, the reasoning that it was not in the interest of any other candidate to circulate them falls flat. Master Tara Singh's addressing a meeting at Mandi Sangat does not imply that he gave the message embodied in the poster in question or that the respondent No. 1 must have thought of taking undue advantage of that leader's visit to his constituency by getting some posters issued in his name. The fact that some leaflets were got printed by the respondent No. 1 is no evidence of his having any connection with the poster on which the petitioner based his allegations. In Northern Gaya (General) Rural Constituency case (Jadu Nandan Mantoon Vs. Musahib Singh and others—1 Doabia Indian Election Cases Volume I, page 745) it was held that where it was alleged that a particular poster containing objectionable matter was published by the respondent, it was not the duty of the respondent to produce his posters and notices to show that the alleged poster was not distributed by him; but the duty lay on the petitioner. The marks of paste on the poster which was produced only indicate that it was affixed on some wall and removed. No further inference can be drawn as to which particular wall that was and at what town or village. To give this matter a more genuine look, it was very easy for Shri Pritam Singh Dhillon, who from the very beginning had been helping the petitioner in questioning the election of the respondent No. 1, to paste such a poster on a wall and then remove it so that its reverse side may show marks of paste or gum. Sending a copy of the poster with the election petition is also of no great consequence. During the time which elapsed between the declaration of the result from Bhatinda Sadar constituency and the date on which the election petition was sent to the Secretary Election Commission any number of posters could be printed.

44. That the petitioner and Shri Pritam Singh Dhillon were helping each other in connection with the election petition can hardly be doubted. The deposit of security of one thousand rupees, as required by Section 117 of the Representation of the People Act, 1951, was made by Shri Pritam Singh Dhillon though on behalf of Shri Faqir Chand petitioner. Shri Pritam Singh gave an explanation that the petitioner had given him that amount for being deposited. The election petition was sent from Bhatinda by post through a registered cover. The registered cover was also handed over in the post office by Shri Pritam Singh Dhillon.

45. On the upper ends of the posters, which were produced, smaller leaflets were pasted. In the election petition there is no mention of these smaller leaflets or posters having a picture of Jathedar Sampuran Singh Raman, another Akali leader, and the marks of bow and arrow. Evidently the posters which were produced had been supplemented by the petitioner and Shri Pritam Singh Dhillon by pasting on one end of them some altogether different posters. The idea must have been to make the case stronger against the respondent No. 1.

46. The circumstances of the case are, therefore, of no help to the petitioner or the substituted petitioner.

47. In the authority cited above (Jadu Nandan Mahtoon Vs. Musahib Singh and others—1 Doabia Indian Election Cases Volume, 1, page 746) the election Tribunal also took the view that where there was no proof that a certain poster had been printed or published by the respondent or his agent the alleged corrupt practice stood unproved. With all respect we agree with that view for unless the respondent or his agent is connected with the printing or publishing or distribution of a poster containing objectionable matter the question of his committing any corrupt practice does not arise. It is, therefore, not necessary to consider whether the poster in question did contain such matter which would have



amounted to a corrupt practice if its publication and distribution had been proved to be with the connivance or command of the respondent No. 1. For the sake of the completeness of the judgment we shall, however, like to touch this aspect of the issue as well.

48. Shri Pritam Singh Sidhu, in his statement interpreted, the words 'Guru Ghar' to mean 'Akali Party' which is not its correct rendering. It was surprising that the respondent No. 1 tried to twist meanings of plain words in order to suit his own object. He was not expected to act in that irresponsible manner and bring down the high and sacred position of Gurus, who are revered throughout the country, to the level of Akali Party, which is a mere political organisation of a section of the Sikh community. 'Guru Ghar' means the house of Gurus and evidently refers to the ten Gurus of Sikhs. In other words the voters were asked to get the blessings of the ten Gurus by supporting the Akali Party candidate.

49. The poster does not amount to undue interference with the exercise of any electoral right as no threat of any divine displeasure or spiritual censure was held out. It could, however, be regarded as a systematic appeal to voters to vote in favour of the respondent No. 1 on grounds of religion and, therefore, a minor corrupt practice under sub-section (5) of Section 124 of the Representation of the People Act, 1951.

50. Publication and distribution of the poster in the manner alleged by the petitioner would have been undoubtedly a systematic appeal. Further the exhortation in it to voters to vote for the respondent No. 1 on the ground that by casting votes in his favour they would be obtaining the blessings of Gurus, would be an appeal to their sentiments on the basis of reverence for Gurus, which is one of the fundamental tenets of the Sikh religion. The appeal would, therefore, be on ground of religion.

51. In the absence of proof, however, that posters similar to Ex. P-4 or P-4/1 were in fact published and distributed or that the publication or distribution was with the knowledge or connivance or command of the respondent No. 1, the very bottom of the petitioner's case falls to the ground. The issue is accordingly decided against the petitioner.

52. *Issue No. 3.*—This issue has not been contested before us. From the office of the Election Commission, India the challan form (Ex. C-1) by which deposit of Rs. 1,000 was made, as required by Section 117 of the Representation of the People Act, 1951, was sent for. It shows that the security was properly deposited and no objection can be taken on this score. The issue is accordingly decided against the respondent No. 1.

53. *Issue No. 4.*—The counsel for the respondent No. 1 did not press this issue at the time of the argument, except stating that as no particulars had been given in the list of particulars regarding villages Ghudda and Kartarsinghwa'a as required by section 83(2) of the Representation of the People Act, 1951, the evidence of the witnesses regarding those villages should not be taken into consideration. We have already accepted that contention of the petitioner's counsel. Besides that there appears to be no other defect in the election petition or the list accompanying it so far as the requirements of Section 81 and 83 are concerned. The issue is accordingly decided against the respondent No. 1.

54. *Issue No. 5.*—This issue, as already stated above, was taken up as a preliminary one and was decided by our order, dated the 8th of January, 1953. It was held by us that the objections taken by the respondent No. 1 regarding the defective filing of the return of election expenses by the petitioner and the respondents Nos. 2 to 7 and their being false in material particulars cannot be tried in this election petition. That order should be read as part of the judgment and is given at its end as an Annexure.

55. *Issue No. 6.*—In view of our finding on issue No. 5 this issue becomes redundant and as such it is not necessary to decide it.

56. *Issue No. 7.*—Neither any evidence was led regard this issue and nor was it pressed during arguments. It is accordingly decided against the respondent No. 1.

57. *Issue No. 8.*—The nomination papers of the petitioner having been improperly and illegally rejected by the Returning Officer the result of the election was materially affected. In accordance with the provisions of Section 100(1)(c) the election from Bhatinda Sadar Constituency has to be declared as wholly void.

58. In view of our above findings the election petition is accepted and the election from Bhatinda Sadar Constituency is declared to be wholly void. The original petitioner having withdrawn is not entitled to any costs. The substituted petitioner is allowed Rs. 150 by way of his costs which amount he shall be entitled to recover from the respondent No. 1.

Pronounced this, the 31st day of May, 1953.

(Sd.) JAGJIT SINGH, *Chairman*.

(Sd.) DALIP SINGH JAIN, *Member*.

(Sd.) SHIVA GOPAL MATHUR, *Member*.

#### Annexure

1. Out of the issues framed in the case it was thought proper to first decide issue No. 5, which was as follows:—

"Whether the Election Tribunal is competent to try the objections raised by the respondent No. 1 regarding the defective filing of the returns of the election expenses by the petitioner and the respondents No. 2 to 7 and their being false in material particulars?"

2. It may be mentioned that from Bhatinda Sadar Constituency Shri Pritam Singh (respondent No. 1) was elected to the Patiala & East Punjab States Union Legislative Assembly. His election was challenged by Shri Faqir Chand of Bhatinda proper. Shri Pritam Singh respondent raised an objection, in his written statement, that the returns of election expenses made by the petitioner and respondents No. 2 to 7 were false in material particulars and had not been lodged before the proper authority as required by rules. The counsel for the petitioner took up the position that the Tribunal is not competent to try the objection taken up by the respondent No. 1 regarding returns of election expenses. For deciding this point it became necessary to strike the abovequoted issue.

3. This issue raises the question whether an Election Tribunal can go into the objection of a respondent that (i) the returns of election expenses of the petitioner and the other respondents were not filed before the proper authority and (ii) these were false in material particulars?

4. The proper authority before whom the return of election expenses has to be lodged is the Returning Officer. Failure to make the return of election expenses entails disqualifications under Sections 7(c) and 143 of the Representation of the People Act, 1951. Rule 114 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, further shows that it is for the Election Commission to determine whether any candidate or his agent has incurred disqualifications due to failure to lodge the return of election expenses within the time and in the manner required by the Act and the Rules. The power of removing the disqualifications also vests in the Election Commission. It is, therefore, no concern of an Election Tribunal to see whether or not the returns of election expenses were filed before the proper authority or which is the same thing that they were not lodged at all.

5. Proceeding to the consideration of the second part of the issue it may be stated at the out set that making a return, which is false in any material particular, is, what has been called in the Representation of the People Act, a minor corrupt practice [Vide section 124(4)]. Further according to Sections 140, 141 and 143 any person guilty of such a corrupt practice, upon trial of an election petition, incurs disqualifications for membership and voting for certain specified periods.

6. Sections 98 and 99 describe the orders which may be made by an Election Tribunal. The relevant portion of Section 99(1) reads as follows:—

"At the time of making an order under section 98 the Tribunal shall also make an order—

(a) Where any charge is made in the petition of any corrupt or illegal practice having been committed at the election, recording:—

(i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of any candidate or his agent at the election, and the nature of that corrupt or illegal practice;

and

(ii) the name of all persons, if any, who have been proved at the trial to have been guilty of any corrupt and illegal practice and the

nature of that practice, together with any recommendations as the Tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under sections 141 to 143."

7. The important words to be marked are "where any charge is made in the election petition of any corrupt or illegal practice." It follows that where no corrupt or illegal practice is alleged in the petition the Election Tribunal is not required to pass an order under clauses (i) and (ii) of Section 99(1)(a). The other clauses of Sections 99 or 98 do not at all contemplate the passing of an order of disqualification by an Election Tribunal in respect of any corrupt practice.

8. Where in accordance with Section 97 a recriminatory petition is filed the position of course becomes somewhat different. Evidence can then be given to prove that the election of the candidate, for whom a declaration is claimed, would have been void if he had been the returned candidate and a petition had been presented calling in question his election. In this case, however, the question of recrimination does not arise as the petitioner has not claimed that he or any candidate other than the returned candidate should be declared to have been duly elected. In Patna University (D.E.C. Case No. 133) it was held that the Election Tribunal cannot make an inquiry into the allegations of corrupt practices against the petitioner unless a recriminatory petition has been filed against him.

9. The contention of the learned counsel for the respondent No. 1 that Section 143 is independent of Section 99 or other provisions in Part VI of the Representation of the People Act, 1951, is not tenable. An Election Tribunal will only engage itself in the inquiry regarding a corrupt practice said to have been committed by some or all the respondents if such an allegation is made in the petition or when through recrimination it is sought to prove that the petitioner or the respondent, for whom the seat is claimed, has been guilty of a corrupt practice which would have rendered his election void in case he had been the returned candidate. In the present case none of these conditions exist.

10. For all the reasons given above we are of the opinion that the respondent No. 1 cannot ask the Tribunal to make an inquiry into the matters contained in issue No. 5.

(Sd.) JAGIT SINGH, *Chairman.*

(Sd.) DALIP SINGH JAIN, *Member.*

(Sd.) SHIVA GOPAL MATHUR, *Member.*

The 9th January, 1953.

[No. 19/196/52-Elec.III/10628.]

**S.R.O. 1384.**—Whereas the election of Shri Padam Chand Patni resident of Rajnagar Colliery, District Shahdol and Shri Sahib Singh (deceased) S/o Shri Charan Singh, resident of Bhad, District Shahdol, as members of the Legislative Assembly of the State of Vindhya Pradesh from the Jaitpur-Kotma constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951, (XLIII of 1951), by Shri Ratan Singh, resident of Malga, District Shahdol and Shri Sarman Lal, resident of Bljuri, District Shahdol;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

**BEFORE THE COURT OF ELECTION TRIBUNAL VINDHYA PRADESH AT REWA.**

**ELECTION PETITION No. 14/304 OF 1952**

1. Ratan Singh, S/O Jagat Singh, R/O Malga, Distt. Sahdol.
2. Sarman Lal, S/O Dadal, R/O Bljuri, Distt. Sahdol—*Petitioners.*

*Versus*

1. Shri Padam Chand Jain, R/O Rajnagar Colliery, Distt. Sahdol.

2. Shri Hukam Chand Jain, S/O Shri Kapoor Chand, R/O Kotma Distt., Sahdol (Socialist).
3. Shri Prem Kumar Singh, S/O Bhagwat Pratap Singh R/O Saranggarh, Distt. Sahdol (Independent).
4. Shri Haider Ali, S/O Shri Abdul Gaffar, R/O Bijuri, Distt. Sahdol (K.M.P. Party).
5. Shri Sahib Singh, S/O Shri Charan Singh, R/O Bhad, Distt. Sahdol (Scheduled Tribes).
6. Shri Sukh Sen, R/O Sahdol, P.O. Pall Birsinghpur (Scheduled Tribes).
7. Shri Dalbir Singh, S/O Shri Angad Singh, R/O Kotma, Distt. Sahdol.
8. Shri Gulab Chand, S/O Bansi Lal, R/O Bijuri, Distt. Sahdol.
9. Shri Rudra Pratap Singh, S/O Bhagwat Pratap Singh, R/O Saranggarh, Distt. Sahdol—*Respondents*

## CORAM:

Shri E. A. N. Mukarji, M.A., LL.B., *Chairman*.

Shri Uma Shankar Prasad, B.A., B.L.

Shri G. L. Srivastava, M.A. LL.B.—*Members*.

The Petitioner No. 1, who was a duly nominated candidate for election to the reserved seat of the V.P. Legislative Assembly from Jaitpur-Kotma Double Member Constituency, and the Petitioner No. 2 who is a voter in this constituency have called into question the election of the successful candidate respondent No. 1 to the general seat and the successful candidate respondent No. 5 for the reserved seat on various grounds set forth in sub-paragraphs (a) to (z), and sub-paragraphs (aa), (bb), and (cc) of paragraph 7 of the election petition. Details of corrupt and illegal practices have been set out in the list annexed to the petition.

2. The grounds, on which the whole election is sought to be declared as void, include defective design of the ballot boxes contrary to the mandatory provisions of law the infringement of the statutory rules in the matter of the sealing of ballot boxes, documents and packets, and the preparation and authentication of various prescribed accounts and forms. It was further alleged that there were unsatisfactory arrangements for transport and safe custody of the ballot boxes affording opportunity for tampering and that the agents of the K.M.P.P. candidates were not allowed due access to the polling stations. It was averred that the ballot boxes of K.M.P.P. candidates were actually tampered with and ballot papers were extracted. The petitioner asserted that the V.P. Government officials of all ranks were hostile to the K.M.P. Party and actively canvassed against the party and committed illegality and irregularity with the connivance of the Congress candidates. It is further stated that the whole Congress organisation intimidated and exerted undue influence on the voters of the constituency and the election has not been a free and fair election. Also it was added that the result of election has been materially affected by the improper rejection of the nomination paper of Govind Das, a K.M.P.P. Party candidate. The return of election expenses filed by respondent No. 1 has been challenged as incorrect.

3. The respondent Nos. 2, 3, 4 and 8 have practically admitted all the allegations of the petitioner. Of the two successful candidates Respondent No. 5 Shri Sahib Singh (Scheduled Tribe) died after the filing of the election petition. The only contesting respondent is respondent No. 1 Shri Padam Chand Jain who won the election for the general seat. He has emphatically denied all the adverse allegations of the petitioner. He pleaded that the array of respondents in the petition was incomplete and the verification was defective, and on these grounds questioned the maintainability of the petition. These contentions were the subject matter of preliminary issues and findings have already been recorded thereon.

4. The counting of votes on 27 and 28 January, 1952 disclosed that the candidates secured the following votes:—

1. Shri Padam Chand Jain (Congress)	...	...	...	5,992
2. Shri Prem Kumar Singh (Independent)	...	...	...	2,982
3. Shri Ratan Singh (K.M.P.P.)	...	...	...	4,797
4. Shri Sukh Sen (Socialist)	...	...	...	4,478
5. Shri Saheb Singh (Congress)	...	...	...	5,589
6. Shri Hukam Chand (Socialist)	...	...	...	2,718
7. Shri Haider Ali (K.M.P.P.)	...	...	...	2,750

5. The following issues were framed for determination in this case:—

*Issue I(a).*—Were Shri Dan Bahadur Singh, Shri Saraswati Prasad and Shri Govind Singh necessary parties to this petition?

(b).—If so, what is the effect of their non-joinder?

*II.*—Are the petition and the list of particulars not properly verified and if so, what is its effect?

*III(a)(i).*—Were the ballot boxes used in this election defective and could they be unlocked and ballot papers could be taken out without breaking open their seals?

*III(a)(ii).*—Were the ballot boxes tampered with with the connivance of respondent Nos. 1 and 5 or their agents, workers or supporters and were ballot papers from the boxes of K.M.P. Party candidates extracted and introduced into the boxes of respondent Nos. 1 and 5 and also fresh and unused ballot papers were introduced into such boxes?

*III(b).*—Has there been a non-compliance with the provisions of the Representation of the People Act, 1951, and the Rules framed thereunder with regard to sealing, making into packets, keeping of accounts and verification etc. as alleged in paras. 7(b) to 7(f) and (h), (j), (l), (m), (n), (o), (p), (r), (t), (u), and (v) of the petition and if so, what is its effect?

*IV.*—Were no adequate arrangements made for the safe transport or safe custody of ballot boxes after the polling with the result that such boxes could be tampered with and were in fact tampered with with the connivance of the agents, workers and supporters of respondent No. 1?

*V.*—Were the ballot boxes of Bangawan polling station removed after the conclusion of the poll to the premises of Rajnagar collery which is owned by respondent No. 1 in order that he and his agents may tamper with such boxes?

*VI.*—Did respondent No. 1 through his agents, workers or supporters get hand bills printed and distributed which did not bear the name of printer and publisher and which contained allegations which relate to the conduct and character of respondent No. 4 which were false? If so, what is its effect?

*VII.*—Did any official of the V. P. Government or Member of the Congress Organisation actively participate in the election by canvassing and exercising undue influence and coercion in order to secure defeat of K.M.P. Party and was this done with the active connivance of respondent Nos. 1 and 5? If so, what is its effect?

*VIII.*—Was the nomination paper of Shri Govind Das improperly rejected and has the result of election been materially affected by such rejection?

*IX.*—Was the return of election expenses filed by respondent No. 1 wrong? If so, what is its effect?

*X.*—Is the petition liable to be dismissed on the ground that the reliefs claimed are not in accordance with law?

*XI.*—To what reliefs, if any, are the petitioners entitled?

6. Issues Nos. I and II were decided on 26th November 1952 and on 15th January 1953 respectively and the petition was held to be maintainable. These findings are on the record of the case.

*Issue No. VIII.*—The parties chose to address arguments on issue No. VIII before dealing with other issues in this case. We, therefore, take up this issue No. VIII first before proceeding to consider other issues in this case. This issue relates to rejection of nomination paper of Govind Das and stands as follows:—“Was the nomination paper of Govind Das improperly rejected and has the result of the election been materially affected by such rejection?”

7. The nomination paper of Govind Das is Ex. P.W. 16/8, dated 5th December 1951. The order of the Returning Officer Sahdol, dated 8th December 1951 rejecting this nomination paper is reproduced below.—“The proposer in this nomination paper has put in his thumb impression in the column meant for signature which has not been duly attested as required by Rule 2(2) of the Representation of the Peoples (Conduct of Election and Election Petition) Rules, 1951. Hence rejected under section 36, sub-section 2(d) of the R.P. Act, 1951.

8. Admittedly the thumb impression of the proposer Terhwa has not been attested according to Rule 2(2) of the Representation of Peoples (Conduct of Election and Election Petition) Rules, 1951. It is, however, contended by the petitioners that, firstly, attestation of the thumb mark was not necessary at all, and secondly, that Terhwa was present with the premises of the Returning Officer's office on 5th December 1951 when the nomination paper was filed and on 8th December 1951 when it was scrutinised. It is, therefore, submitted that the thumb mark and the identity of the proposer could have been and should have been verified by the Returning Officer. In the circumstances, the rejection of this nomination paper has been assailed as improper.

9. In connection with the first ground, it is argued that the expression used in Section 33 regarding the presentation of nomination paper is "subscribed" and not "signed", and therefore this thumb mark is not hit by Rule 2(2) *ibid* in which the words "deemed to have been signed" have been used. This argument has been sought to be reinforced by reference to the various sections of the R.P. Act where the word "signed" and "subscribed" have been used. It is, however, admitted that subscription includes signature. But it is contended that Rule 2(2) should have been strictly construed and if it is so construed, subscription cannot fall within the ambit of this rule. On the other hand it is urged on behalf of respondent No. 1 that these two expressions are synonymous and therefore in either case Rule 2(2) would apply.

10. We have minutely and carefully examined this question. The word "signed" has been defined in section 2 of the R.P. Act, 1951, as follows:—

"2(k) "Sign" in relation to a person who is unable to write his name means authenticate in such a manner as may be prescribed".

11. It is necessary to reproduce Rule 2(2) which stands as under:—

"2(2) For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the mark of such person".

12. The expression "subscription" has not been defined or explained in the Act or in the Rules made thereunder. It was not perhaps necessary to define or explain it, as it is a common term whose meaning and significance are generally understood. This term is derived for the Latin "subscribo" meaning to write under or underneath. In *Corpus Juris* Vol. LX (1932) at page 838 the primary sense of this expression "subscribe" has been set out as follows:—

"To attest or give consent or evidence knowledge by handwriting usually (but not necessarily) the name of the subscriber; to attest by writing the name; to give consent to something written by signing one's name".

At the same page of this monumental treatise the following passage is to be found:—

"The strict definition of the term involves the idea of a written signature or a writing".

13. At page 839 of the same volume of *Corpus Juris* "subscribe" has been defined as meaning the signing of one's own name. In this compilation each meaning has been supported by the citation of judicial authorities and for this meaning *Smith versus Bufful* 115 N.E. 669 and 228 M.A.S.S. 400 have been cited.

14. It is not necessary that subscription should be at the end or the bottom of a document. It may be at any appropriate place. At page 718 Vol. LVIII of *Corpus Juris* on the basis of *in re Walker* 110 California 387 this matter has been dealt with as follows:—

"But the place of writing is immaterial, since a still more general meaning of the word "subscribe" is to attest by writing in which definition the locality is wholly disregarded".

15. At the same page of the same volume these two expressions have been distinguished as follows:—

"To sign" applies to every species of written authentication while "to subscribe" indicates the making of a particular kind of signature.

16. After the examination of the available authorities and the perusal of various sections of the R.P. Act, 1951 where these expressions have been used, we have no doubt that the term "subscribe" include signature. This is supported by item No. 12 and 16 of the prescribed nomination form providing for the signature of the proposer and seconder respectively. The argument on behalf of the petitioner seeks to create a distinction without a difference. We are of the opinion that the signature of the proposer and seconder is a legal requirement of a valid nomination paper. In this view of the matter, in the case of an illiterate person his thumb mark requires attestation according to the aforesaid Rule 2(2) read with the definition of "sign" in clause (k) of section 2 of R.P. Act 1951.

17. The second ground urged on behalf of the petitioner is that the Returning Officer should have verified the identity of the proposer and genuineness of the thumb mark by personal enquiry from the proposer who was present within the premises of his office on the occasion of the filing of the nomination paper as well as on the occasion of the scrutiny. It is suggested that the Returning Officer should have attested the thumb mark of the proposer as provided in Rule 2(2) and should have thus legalised the nomination paper which suffered from this defect. In this connection reliance was placed on sub-section 4 of the section 36 of the R.P. Act, 51, which provides that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. This contention may be treated as a mixed question of fact and law—fact regarding the presence of the proposer Terhwa examined in this case as P.W. 27, and law regarding the powers and functions of the Returning Officer. P.W. 27 Terhwa (Proposer) stated that he and his companions were sitting on the ground when the nomination paper was filled in while the Returning Officer was sitting inside the Shamiana at a short distance from him. This witness does not remember whether he thumb marked the nomination paper on a table or on the ground. Other witnesses who have referred to the occasion of the filing of the nomination paper and scrutiny are P.W. 5—Hukumchand, P.W. 17—Govind Das, P.W. 22—Halder Ali, P.W. 26—Ratan Singh, and P.W. 28—Nan (seconder). These witnesses have deposed that Terhwa was at a short distance from the D.C.'s seat and when this question was raised by one Baboo Lal Udanla at the time of scrutiny Govind Das submitted to the Returning Officer that his proposer was present and may be examined. According to the evidence there was a big crowd on the day of scrutiny. It appears that Terhwa was present on the date of scrutiny in the crowd which gathered near the Returning Officer's Shamiana.

18. The main question is whether the Returning Officer should have embarked on an enquiry regarding the thumb mark of the proposer at the date of scrutiny. The nomination paper discloses that it was presented by the candidate Govind Das himself on 5th December 1951. According to section 33 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by the proposer and seconder should have been delivered to the Returning Officer between the hours of 11 O'clock in the forenoon and 3 O'clock in the afternoon on or before the date appointed for this purpose under clause (a) of section 30 of the Act. It need hardly be emphasized that the delivery of a duly completed and subscribed nomination paper is a very vital part of the proceeding of election and purports to bring into the arena of election the candidates for election. The law of election is a technical law requiring compliance with certain vital provisions. The question which arises for decision is whether this important document (nomination paper) if not completed in the prescribed manner before delivery can be regularised or legalised by extraneous enquiry at the time of scrutiny. This leads us on to the consideration of the question whether the Returning Officer can or should attest the signature of an illiterate person at the time of scrutiny. For these purposes it is necessary to examine and consider the provisions of section 36 of the R.P. Act. Sub-section (2) provides for such summary enquiry if any, as the Returning Officer thinks necessary before a rejection of nomination paper on any of the 5 grounds enumerated as (a) to (e) in this sub-section.

19. This section does not provide for the validation of a nomination paper by attestation of the signature of an illiterate person which should have been done before the delivery of the nomination paper. We have great doubts whether such attestation at the time of scrutiny would be proper on the part of the Returning Officer because this procedure is not authorised by law. Not being authorised by law, if a Returning Officer adopts this course, it may be contended with

some force that the acceptance of such subsequently validated nomination paper is a case of improper acceptance. At the time of scrutiny the functions of the Returning Officer are of a very delicate and onerous nature. If he departs from the prescribed rules contained in this section his action would be exposed to legal objection, and if he does not, his procedure may be assailed as too technical falling within the ambit of sub-section 4.

20. After considering the pros and cons of this question we have come to the conclusion that the nomination paper should have been duly completed and subscribed before its delivery to the Returning Officer and the matter of attestation should not have been left over to the time of scrutiny. The act of proposing is solemn act and has to be performed in a legal way. If it is not performed in a legal or prescribed manner, we do not think that this defect is not of a substantial character. The validity of this document depended on the compliance with the mandatory rules and a candidate cannot be regarded to be duly nominated candidate if such rules were not duly observed. Those who deliver a nomination paper to the Returning Officer are expected to know the law and the rules governing the completion and execution of this important document. If they do not, they have only themselves to thank.

21. We, therefore, hold that the order of the Returning Officer rejecting the nomination paper of Govind Das was proper and decide the issue No. VIII accordingly. In this view of the matter, no question arises of the effect of rejection of this nomination paper of Govind Das on this election, as the rejection was not improper.

22. Issue No. III consisting as it does of three parts is a very comprehensive and important point. We propose to take up this issue last of all. We, therefore, proceed to take up Issue No. IV, about the inadequate arrangements for the safe transport and safe custody of ballot boxes after the polling, and the consequent possibility of tampering with the ballot boxes, with the alleged connivance of the agents, workers and supporters of respondent No. 1.

23. The burden lay on the petitioners to prove this issue. We find from the evidence that the Presiding Officer entrusted the ballot boxes after the polling to the police guard that was in attendance and the latter conveyed the boxes to the places appointed for their safe custody. P.W. 4—Gulabchand—who is respondent No. 8 in this case was a candidate at this election, who had withdrawn his candidature. He was the Joint Secretary of K.M.P. Party of Distt. Sahdol. He has been taking part in these proceedings enthusiastically and has given lengthy evidence about the various matters which form the subject matter of enquiry in this case. He has stated that at all the polling stations where he was present, the ballot boxes were removed by the police in the trucks belonging to the respondent No. 1, and that some of his agents accompanied the police. This has been denied in the witness box by respondent No. 1 Shri Padam Chand Jain, who was examined as R.W. 16 in the case. Obviously P.W. 4 Gulabchand is a highly interested witness and we have to ascertain how far he has been corroborated regarding this matter by dependable witnesses. P.W. 19—Bhag Bali, P.W. 22—Maider Ali, and P.W. 23—Sobhnath, are other witnesses examined on this issue. P.W. 19 is a servant of Halder Ali P.W. 23. Sobhnath served Haider Ali in the past and has stated that he was no longer in his service. These witnesses do not impress us as reliable. Besides the evidence given by them is neither probable nor impress us as reliable. We, therefore, hold that it has not been proved in this case that there was no satisfactory arrangement for the transport and custody of ballot boxes. Further, there is no evidence at all that the ballot boxes were tampered with during their transport with the connivance of the agents, workers and supporters of respondent No. 1. The whole issue is, therefore, decided as un-proved and this is our finding on the same.

24. Issue No. V.—This issue relates to the removal of ballot boxes of Bangawan polling station after the conclusion of the poll to the premises of Rajnagar Colliery, alleged to be owned by respondent No. 1. With a view to facilitating tampering with the boxes on behalf of respondent No. 1. There is no reliable evidence adduced by the petitioners in support of this contention. On the other hand, the evidence of R.W. 3 Shri S. C. Rao, Manager of Rajnagar Colliery has completely disproved this allegation. Shri S. C. Rao has been working as Manager of Rajnagar Colliery from September, 1950. He has stated that the Bangawan polling station was situated in the colliery buildings which had been requisitioned by the Government, and that the ballot boxes were kept after the polling each day, in the same buildings, till the time of their removal. Under Sec. 160 the State Government is empowered to requisition any premises needed for the purposes of being used as a polling station or for the storage of the ballot boxes or any vehicle needed for



the transport of the ballot boxes. If this was done, there was nothing illegal or objectionable in this procedure. We believe the testimony of Shri Rao regarding the storage of ballot boxes. He has further stated that the respondent No. 1 did not own any interest in this colliery which is owned by the firm named Dalchand Bahadur Singh. We, therefore, decide this issue in the negative.

25. *Issue No. VI.*—This issue refers to the hand bill or leaflets printed and distributed on behalf of respondent No. 1, without the names of the printers and publishers and containing false allegation against the conduct and character of respondent No. 4 Shri Haider Ali. This leaflet has been produced by the petitioners and has been marked as Ex. P.W. 4/10. This printed document certainly contains allegations against respondent No. 4 in respect of some tickets bearing the symbol of hut alleged to have been given by him to the voters for being put into ballot boxes. There is no doubt that the allegations are serious enough. This document was denied by the respondent No. 1, as also all the allegations in the petition relating to this document were denied. In these circumstances, it was natural to expect that some strong evidence proving that these leaflets were got printed and published on behalf of respondent No. 1 would be forthcoming in the case. It may be noted that the name of the printers (Lahlri Printing Press Chirmiri) finds place at the foot of this document. It was therefore easy enough to examine the printers and to trace the name of the publisher and the person who got this document printed. We, however, find that this was not done. It was argued on behalf of the respondent No. 1 that this document might have been brought into existence by the petitioners themselves with a view to strengthening their case. This may be a tall theory. But the fact remains that the necessary evidence has not been adduced on behalf of the petitioners. Apart from P.W. 4 Shri Gulabchand, whom we have already referred to as a very interested witness, P.W. 22 Shri Haider Ali (respondent No. 4) and P.W. 6 Patiram were the only witnesses examined regarding this matter. We are not impressed by the testimony of P.W. 6 Patiram who stands condemned out of his own mouth. He stated that he was a Congress worker at the last election and in the course of canvassing distributed pamphlets such as P.W. 4/10. He further added that he used to publish amongst the voters that 27 persons who had voted for the K.M.P.P. candidate had been arrested and that he had known that this allegation was untrue. A man of this type cannot be regarded as a safe person whose testimony can be acted upon. P.W. 4 admitted in cross examination that he had seen the pamphlets being distributed only at Bella while P.W. 22 said nothing beyond denying the contents as false. We hold that the charge of printing, publishing and distributing such leaflets has not been brought home to the respondent No. 1 who has been denying it from the very beginning and has repeated his denial in the witness box. That being so, the examination of the question whether the allegations contained in this leaflet are of the description referred to in sub-section 5 of section 123 of the R.P. Act, 51 is unnecessary. Our finding in respect of this issue, therefore, is that it has not been proved that such leaflets were distributed on behalf of respondent No. 1 through his agent, workers or supporters.

26. *Issue No. VII.*—This issue is based on the allegations contained in sub-paragraphs W and X of paragraph 6 of this election petition. It would be well to re-produce this sub-para W below:—

(W) "Because the V.P. Government officials of all ranks were bitterly against the K.M.P. Party to which the petitioner No. 1 belonged and these officials actively participated in the election by canvassing and other mal-practices used undue influence and coercion with a view to secure the defeat of K.M.P. Party. The various illegalities and irregularities complained of in this petition were perpetrated by the V. P. Government officials with the active connivance of the Congress party leaders in the V.P. and the Respondent No. 1 and 5".

Sub-para (X) refers to open intimidation and undue influence on the voters said to have been exercised by "the whole Congress organisation including its members, workers and supporters" with the result that the election has not been a free and fair election. Both these sub-paragraphs form the subject matter of this issue. It would appear that these general and sweeping allegations are deplorably lacking in definiteness and precision required in pleadings of such a serious nature. In the list of particulars appended to this petition consisting, as it does, of 4 paragraphs only, we find that an allegation against the Presiding Officer of Thangam polling station has been made about the admission of the sons of Illakadar of Kothi and other Congress workers within the polling station and the change of a polling booth from the Mukhtias house to the place known as 'Zakhira'. Another particular is to be found in para 4 of this list about the Presiding Officer of Sarangarh polling station. It is alleged therein that this officer dispersed the gathering of

K.M.P. Party workers and some independent candidates on the 18th January, 1952 at Katkona, while Congress workers were allowed to go scot free. If really these were the only incidents on the basis of which the serious allegations contained in sub-para W were made, there would be no justification for their serious and sweeping nature. We had to question the petitioners regarding these allegations and their learned counsel made a statement to the effect that only Government officials who took direct part in conducting the election were moant and not the general body "of the V.P. Government officials of all ranks", referred to in sub-para W of the petition. For want of particulars these vague and general allegations could be disregarded and an issue would have been framed in respect of the particulars set out in the list. But such allegations were a common feature of various petitions pending before this Tribunal and it was thought fit to give the petitioners a full and fair opportunity to substantiate their allegation of general political animosity on the part of Government officials against the K.M.P. Party and hence the issue was allowed to stand as it is. If there was some substance in these allegations, it would be certainly a very serious condition of things and perhaps the election could be described as not being a free and fair election.

27. Full opportunity was afforded to the petitioners for adducing evidence in this case. We have examined this evidence carefully. We, however, find that the evidence does not justify this serious charge. No doubt there were some serious irregularities in the issue and use of ballot papers as also in the preparation of prescribed accounts at the time of counting. These questions would be dealt with fully when we record our findings on the comprehensive issue No. III which governs these matters. At present we are concerned with the conduct of such officers as were in charge of polling stations and in this capacity, are alleged to have furthered the cause of the Congress candidate at the expense of K.M.P.P. candidate. In all 28 witnesses have been examined on behalf of the petitioners in this case. We propose to deal with the testimony of the witnesses who have given evidence regarding this issue. Such witnesses are P.W. 3, P.W. 4, P.W. 12, P.W. 15, P.W. 18, P.W. 22, and P.W. 26.

28. P.W. 3 Ram Pratap stated that he had gone to cast his vote at Bijuri polling station and remained there upto 4 P.M. He cast his vote at about 2 P.M. He alleges that a Tehsildar whose name he did not know came to the polling station at 4 P.M. and enquired from the voters as to whom they were going to vote for. It is said that the Tehsildar who sat in the courtyard outside the polling booth allowed the Congress voters to cast their votes and delayed K.M.P.P. voters by about an hour. This witness has further stated that he was seated in a truck against his wish. It is difficult to believe that a person with a definite bias against the Congress candidate would be given a compulsory lift. Formerly he did carting work in the colliery and had to stop doing so about a couple of years ago. Written complaint (P.W. 3/1) bearing this witness's signature contains curious and disingenuous allegations. The Presiding Officer and the Tehsildar have been examined. The Tehsildar, P.W. 5 (Shri Alopri Prasad) who is now A.D.M. at Sahdol and the Presiding Officer, P.W. 13 (Shri Bebari Lal) were examined by the respondent. Both these witnesses have flatly contradicted this witness and it appears that it was the Tehsildar's duty to make a tour of inspection of polling stations including Bijuri. P.W. 3 Shri Ram Pratap is unreliable and has given a garbled story.

P.W. 4.—Shri Gulabchand has largely referred to the irregularities in the sealing and transport of ballot boxes, as also about the use of trucks in sending voters to the place near the polling booth. He did not state anything definitely against Govt. officials barring such allegations and irregular procedure as may be said to reflect their personal bias or ignorance of rules. This witness was Joint Secretary of K.M.P.P. at Sahdol and his conduct disclosed his natural solicitude for the candidate of his party. This party seems to be well organised political body in this state. This party had issued written instructions to its workers. It is somewhat surprising that no step seems to have been taken against Govt. officers under Section 129 of the R.P. Act, 1951. This witness's evidence is very tenuous so far as this issue is concerned. P.W. 12 Dadhibal Kewat referred to Chhotu Chowkidar's advice tendered to the witness on communal grounds against Haider Ali. He has broken a new ground. He was admittedly staying for 4 days before giving of evidence at the Kothi of Harol Sahib (Sardar Narmada Prasad Singh). We refuse to believe this witness.

P.W. 14 Charkoo stated that on the day preceding the polling day Rajaram along with 4 Chowkidars had visited his village and advised the voters to vote for the Congress candidate lest they should be punished. He added that the voters got afraid and many of them did not go to the poll. In cross-examination he admitted that out of 30 voters of this village, 20 went to poll—not a bad percentage. The

witness who was staying at the Kothi already referred to, for 4 days before giving evidence, did not know Rajaram before the day in question. We are not prepared to act on the testimony of this witness.

P.W. 13 Koswa Gond stated that 4 days before the poll at Thangaon the Patwari had gone to his village and advised them to vote for the candidate bearing the symbol of bullocks. His statement that he was all along under the impression that the polling was to take place at Mukhia's house, is apparently untrue. He has proved himself to be a liar by his answers in cross examination.

P.W. 22 Shri Haider Ali and P.W. 26 Shri Ratan Singh are the K.M.P.P. candidates. Beyond reference to scrutiny of nomination papers, transport of ballot boxes and the change of polling station to 'Zakhira' the only passage in the statement of P.W. 22 relating to the conduct of Govt. servants is a reference to some police constables whose names are not disclosed at some polling stations. According to him these constables and "some of the polling officers" (unnamed) exhorted the voters to vote for the Congress. His evidence is jejune in the extreme. It appears to me unconvincing because this canvassing is alleged to have been done under the very nose of K.M.P.P. candidate. The testimony of P.W. 26 Shri Ratan Singh does not carry us far in respect of this issue, and he seems to have observed discreet silence about the matters which are being dealt with.

29. The Returning Officer P.W. 16 (Shri Shankhdhar Singh), Deputy Commissioner, Datia was examined on behalf of the petitioner and several Presiding Officers have been examined on behalf of the Respondent No. 1. We do not find any support for the allegations which are the subject matter of this issue in the testimony of these witnesses save and except the infringement of rules in the issue and use of ballot papers, and the preparation of some prescribed document matters to be dealt with by us separately in our findings of issue No. III.

30. In the evidence adduced by the petitioners such facts and circumstances are lacking as would have sustained the serious charges contained in the pleadings about the misconduct of Govt. officials. Our conclusion, therefore, is that this issue has not been proved by the petitioners and so our finding on this issue is in the negative.

31. *Issue No. IX.*—This issue relates to the making of return of election expenses as false in material particulars by the Respdt. No. 1. Such an act falls within the ambit of sub-section 4, section 124 of the R.P. Act, 1951, and is classed as a minor corrupt practice. The contents of the petition and the list of particulars indicate that no particulars of this corrupt practice were supplied by the petitioners. Further more, it is remarkable that no evidence on this issue was led by the petitioners at all. It was in the cross examination of the respondent No. 1 examined as R.W. 16 and R.W. 23 Mahabir Prasad the following two items were ferretted out:—

(1) Rs. 25 given to R.W. 23 Mahabir Prasad.

(2) Some amount paid to the Congress organisation at the time of applying for Congress ticket. The first item is explained by the last two lines of the document Ex. R.W. 23/1 and has been duly mentioned in the return. The second item is unspecified, as also the time when it was paid is not known. Some tangible evidence would have clarified the position but none was adduced in the case. We are therefore left severely alone with a stray statement elicited in cross-examination. Section 83 of the R.P. Act requires definite particulars so that a party may know exactly the charge which is to be met. We feel that it would not be just and fair to use this stray and belated statement lacking in the details about the amount paid and the time of payment. There is nothing to supply this deficiency and it would be too much to hold that this corrupt practice has been proved in view of the circumstances adverted to above. No doubt a plea can be sustained on the evidence of the opposite party. But a definite plea is a condition precedent. The return of election expenses filed by respondent No. 1 is far below the legal limit and there seems to have been no reason to withhold such small amount from the account furnished in the Return. We are, therefore, unable to hold that this minor corrupt practice has been proved in this case.

32. Now we take up the important and comprehensive issue No. III, relating to the design of ballot boxes tampering and non-compliance with the provisions of the R.P. Act, 1951, and rules made thereunder as alleged in paras. 7(b) to 7(f), and sub-para (h), (j), (l), (m), (n), (o), (p), (r), (t), (u), and (v) of the petition and the effect thereof on the result of the election.

33. *Issue No. III 9(a) (i).*—This issue refers to the defective design of the ballot boxes which could, according to the petitioner, be opened without breaking the

seals and ballot papers could be taken out. P.W. 25 Shri Jai Singh was examined to prove this issue and he opened the ballot box without breaking the paper seal, but after unfastening the thread knots on the lid. We have dealt with this issue about the nature and design of the ballot boxes at length in the election petition No. 3/141 of 1952 (Shri Keshau Prasad *versus* Brijraj Singh) decided on 20th May 1953. After hearing the parties again, our opinion is that the design of the ballot boxes approved by the Election Commission was in substantial compliance with the requirements of Rule No. 21 of R.P. (Conduct of E. & E.P.) Rules, 1951, and that the ballot boxes were so constructed. It was shown in this case that the ballot boxes could be opened without breaking the paper seal. Apparently the boxes have not proved equal to superior mechanical cunning and force against which an inner fastening can seldom be proof. Apart from this aspect of the question, its material effect on the election would be considered hereafter.

34. *Issue No. III(a) (ii).*—This issue refers to the tampering with the ballot boxes and extraction and introduction of the ballot papers therein to the advantage of respondent Nos. 1 and 5. It was argued that direct evidence of this mal-practice could not be available and it could be inferred from the logic of facts and figures proved in connection with the issue and use of ballot papers, the preparation of form No. 10 and the various packets and check slips etc. This means that the issue No. III(b) relating to non-compliance with the provision of law and to the effect thereof should first be decided. From the conclusions on this issue the theory of tampering can be proved or disproved. In fact these two issues are allied ones and may be taken up together.

35. While dealing with this issue we wish to make it clear that we are not prepared to act upon the interested testimony of the petitioners' witnesses, as our findings already recorded would indicate. But this does not mean that we should reject this evidence totally in matters in which it finds strong support and corroboration from the facts proved by the documentary evidence and the acts of the Presiding Officers. These Presiding Officers are R. W. 4 Shri Janardan Prasad and R.W. 11 Shri Audh Saran Misra, each in charge of 5 polling stations. With a view to facilitating the proper undertaking of the various acts of these Presiding Officers before and after the poll, it is necessary to start from the time when they received parcels of ballot papers from the Returning Officer P.W. 16 Shri Shankhdhar Singh. From the Chart Ex. P.W. 16/A it appears that to these Presiding Officers as also to others, ballot papers were issued for use in their respective polling stations not polling-station-wise, but in lump for use at their polling stations. Unfortunately this procedure has proved to be a source of further trouble in the conduct of this election. The Presiding Officer R.W. 4 Shri Janardan Prasad was in charge of 5 polling stations, namely, Amlai, Chilpa, Manjira, Bamhni and Pasela; and the Presiding Officer R.W. 11 Shri Audh Saran Misra was in charge of other 5 polling stations namely Bijuri, Thangaun, Baherabandh, Belia and Katkona.

36. Had the Presiding Officers referred to above been methodical and regular in the proceedings in the various polling stations, they could easily have allotted to each polling station the ballot papers in serial order and in adequate number. They did not do so, but instead adopted a very objectionable method of using ballot papers according to their own sweet will and pleasure. The result was that the forms No. 10 which they prepared, if they prepared them at all, at various polling stations after the close of the poll, have been found to be very shady and suspicious documents. By following this dubious course they landed into a sea of trouble and made the task of verification at the time of counting practically impossible. We asked the parties to prepare a tabular statement of authorised ballot papers, the number of ballot papers received, returned and cancelled and the ballot papers found in the ballot boxes of these ten polling stations. These figures were compared with the check slips prepared after the ballot boxes were opened for the counting. This statement was compared and verified by us. The figures thus collected and attested are given in the following paragraph.

### 37. (A) Bijuri Polling Station.

The serial number of ballot papers authorised is from 66,101 to 71,400. The number of ballot papers received for use as entered in form No. 10 is 1,260, while those unused and returned and cancelled are 8 and 53 respectively. Ballot papers in ballot boxes according to form No. 10 were 1,199. According to check slips, the serial number of authorised ballot papers was from 66,101 to 67,360, and ballot

papers found in the ballot boxes were 1,417. The number of ballot papers according to form No. 10 was 1,260, while the actual number of ballot papers found in the ballot boxes was 1,417. Thus there were 157 ballot papers found in excess in the ballot boxes.

(B) *Thangaun Polling Station.*

The serial number of authorised ballot paper is not mentioned in form No. 10. The number of ballot papers received for this polling station was 960 according to this form, 16 ballot papers having been cancelled and 944 ballot papers ought to have been in the ballot boxes and were so entered in form No. 10. According to the check slips 1,271 ballot papers were found in the ballot boxes. There is thus an increase by 327 ballot papers. Ballot papers allotted according to the check slips were from 67,361 to 68,280.

(C) *Baherabandh Polling Station.*

The serial number of authorised ballot papers according to form No. 10 was from 70,985 to 71,000. Underneath these figures are also given 66,107 to 66,500. The number of ballot papers received was shown as 1,001. The number of unused ballot papers and returned and number of ballot papers cancelled was 12 and 13 respectively. Thus ballot papers which should have been in the ballot boxes, have been entered as 976. The check slips tell a different tale. Serial numbers mentioned are from 68,281 to 69,240 and the ballot papers actually found in the boxes were 711 only. Thus in this case there is a shortage of 265 ballot papers.

(D) *Belia Polling Station.*

The serial number of ballot papers authorised was shown as from 66,480 to 67,670. The ballot papers received have been shown as 1,190. Unused and cancelled ballot papers were 3 and 8 respectively. Thus ballot papers in the boxes have been shown in form No. 10 as 1,177. The check slips expose the incorrectness of these figures. According to it the serial number was shown from 69,241 to 70,420 and ballot papers actually found in the ballot boxes were 781. Thus there was a shortage of 396 ballot papers.

(E) *Katkona Polling Station.*

The serial number of ballot papers authorised according to form No. 10 is from 66,878 to 67,210. Number of ballot papers received for this station is shown as 966, and after deducting 4 as unused and cancelled the number in the ballot boxes comes to 962.

The check slips show the serial number from 70,431 to 71,400 and the actual number of ballot papers in the boxes was 659. Thus there was a difference of 303 ballot papers.

(F) *Chilpa Polling Station.*

The serial number of authorised ballot papers is entered as from 94,077 to 94,995. The ballot papers received have been shown as 918. Ballot papers unused and returned have been shown to be 641 and 41 shown as cancelled, leaving the number 236 to be found in the ballot boxes according to form No. 10.

NOTE.—The number 641 of unused and returned ballot papers is extraordinary and suspicious. The check slip shows the serial number as 94,171 to 95,095 and the ballot papers actually found in the boxes were 413. Thus there was an increase by 177 ballot papers.

(G) *Bamhni Polling Station.*

The serial number of authorised ballot papers is from 96,234 to 97,793, and the ballot papers received were shown as 1,459. Unused and returned have been shown as 1,090, while cancelled as 107, leaving 262 ballot papers in the ballot boxes. The check slips show the serial number from 96,426 to 97,825 and the ballot papers actually found in the boxes were 631. Thus there was an increase by 369 ballot papers.

(II) *Pasela Polling Station—*

The serial number of authorised ballot papers is from 1,51,486 to 1,52,500.

The number of ballot papers received for this station is given as 1,015 while unused and cancelled are 731 and 37 respectively, thus leaving a balance of 267 ballot papers in the ballot boxes. The check slips show the serial number from 97,886 to 98,900 and ballot papers actually found in the boxes were 492 an increase by 125 ballot papers.

(I) *Amlai Polling Station—*

The serial number of ballot papers authorised is from 1,46,601 to 1,47,770. Ballot papers received have been shown in form No. 10 as 1,169, unused and returned 831 and cancelled 304, leaving in the ballot boxes 34 ballot papers. The check slips show the serial number from 93,001 to 94,170 and actual number of ballot papers in the boxes was 57. Thus there is an increase by 23 ballot papers.

(J) *Majra Polling Station—*

The serial number of authorised ballot papers is from 94,996 to 96,233. Ballot papers received are shown as 1,237, unused and returned as 900 and cancelled 46 and in the ballot boxes 291.

The check slips show the serial number from 95,096 to 96,425 and ballot papers actually found in the boxes were 628. Thus there is an increase by 337 ballot papers.

NOTE.—The number of unused and returned ballot papers is extraordinary and suspicious in the last mentioned three polling stations.

38. The above figures relating to the aforesaid 10 polling stations tell their own tale and disclose a very deplorable condition of things. Before arriving at our conclusions, we wish to note that the total number of votes polled in these ten polling stations is 6,672 i.e. 3,432 for the general seat and 3,240 for the reserved seat (Scheduled Tribes). The total of valid votes for the general seat in this constituency (Jaitpur-Kotma) amounted to 14,442. The aforesaid ten polling stations, thus constituted 24 per cent. of the total poll. The total of polling valid votes for the reserved seat amounted to 14,844 and the total of polling in these ten polling stations was 3,240. Thus the percentage for the reserved seat in these ten polling stations was about 20 per cent. We have applied our mind to the question of reconciling the serious discrepancies between the figures contained in form No. 10 and the actual figures disclosed by the check slips. It is practically impossible to reconcile them and to explain the remarkable increases and decreases in the number of ballot papers actually found in the ballot boxes evidenced by the check slips and the entries in forms No. 10. R.W. 4 Shri Janardan Prasad stated that he had written instructions as well as practical training about polling. He further stated that ballot papers were issued polling-station-wise and that he had never used ballot papers issued for a particular polling station at another polling station. R.W. 11 Shri Audh Saran Misra said that he had no written instructions but got practical training. He stated that he was informed that the ballot papers bearing definite numbers were to be used at each particular polling station. He admitted that he had in his possession many unused ballot papers which he kept at his house and the same were returned to the Returning Officer at the time of counting. It appears that in these circumstances considerable decrease may imply the extraction of ballot papers from ballot boxes. So also the increases may well be due to the introduction of additional ballot papers in the ballot boxes. We have no counter theory to act upon in the statements of these two witnesses, nor have these increases and decreases in the ballot papers been explained in the course of argument. In these circumstances we shall be wandering in the realm of speculation if we hit upon other possible theories.

39. After careful and anxious consideration of these matters we are constrained to come to the conclusion that the forms No. 10 prepared at these polling stations seem to be fictitious and that there was serious manipulation of ballot papers. The salutary rule No. 33 requiring the preparation of form No. 10 and its despatch along with the packets referred to in rule No. 32 was given the go-bye to. Ballot papers which constitute the exercise of the valuable right of franchise when they are used by the electors, were treated in a cavalierly way. In fact it is difficult to find the exact number of valid votes polled by each candidate in these ten polling stations where a considerable percentage of votes, as already adverted

to, was cast. What is the effect of the defiance of statutory rules and serious manipulation of ballot papers in these polling stations. This is a question which we are going to examine and decide.

40. Before proceeding further we have to deal with the allegations contained in para. 7(b) of the petition concerning the defective sealing of the ballot boxes and infringement of clause 5 of rule 21 of Representation of People (Conduct of Election and Election Petition) Rules 51. The petitioners have examined P.W. 4, P.W. 21 and P.W. 22 about the defective sealing. Though it is difficult to find his issue in favour of the petitioners on the testimony of these witnesses, we note that P.W. 11 Shri K. K. Saxena who acted as Presiding Officer at 5 polling stations has stated that the paper seals Ex. R.W. 12/1 and R.W. 12/2 did not bear the signature of any of the agents of the candidates, but of the Presiding Officer only. These seals were produced before the court. He explained that the polling stations to which these seals relate were in the thick of the forest and the agents of the candidates arrived after the sealing was finished. It may or may not be so. Generally K.M.P.P. candidates and agents were alive and alert, not to say unduly suspicious. The fact however remains that other paper seals were called for at the instance of the petitioners but they were said to have been destroyed, though they ought to have been preserved according to rules 51 and 53.

41. One matter more remains. That is about the use of the trucks for fetching voters by or on behalf of respondent on the polling day. This allegation has not been proved and we reject the evidence of the petitioners' witnesses on this point. The evidence of Shri S. C. Rao the Colliery Manager is more convincing. Movements of colliery labour in trucks seem to have been mistaken for movements of voters. An enquiry was made on the spot immediately and the allegation could not be substantiated. Some petty instance such as driving away a crowd of K.M.P.P. voters or workers become otiose in view of the serious infringement of important rules referred to above.

42. We resume the consideration of the effect of infringement of Rules 32, 33 and 49. This leads us on to the consideration of another question whether these rules are mandatory or directory. Really this question does not arise in this case. We have pursued the orders of Election Tribunals in Shri Gidwani's case in petition No. 5 of 1952, the order of Bhagalpur Tribunal in election petition No. 142 of 1952 in Shri Mahabir Das's case. In fact the whole question hinges upon the material effect of non-compliance of the election rules on the result of election. We would, therefore, do well to focus attention on this question. Undoubtedly there has been non-compliance with the rules relating to elections within the meaning of section 100(2)(c) of the R.P. Act, 1951. The real question is what was the effect.

43. The non-compliance with the Rules 32 and 33 in these ten polling stations coupled with the fictitious nature of forms No. 10 and the serious reductions and additions of ballot papers in the ballot boxes makes the number of votes actually recorded for each candidate by electors extremely doubtful. The extent to which such manipulations proceeded cannot be determined. Consequently the result of election at these polling stations does not represent the actual suffrages of electors but is tainted with extraneous accretions or subtractions. There was no real election according to rules at these polling stations which represent 20 to 25 per cent. of the total polling. Though Respondent No. 1 secured a majority of about 3,000 votes over the candidate next to him at the poll, respondent No. 5 Saheb Singh won by a majority of 772 votes only, getting 5,569 against 4,797 polled by the petitioner No. 1 Shri Ratan Singh, next to him. What would have been the result, if the rules were observed and there was absence of additions and subtractions from ballot boxes as far as Saheb Singh was concerned. No body can tell. It was, however, quite possible that this narrow majority of Shri Saheb Singh would well have been wiped out. This is not all.

44. It is pertinent to note what the Returning Officer Shri Shankhdhar Singh, P.W. 15 had to say in the last para. of his examination in chief which runs thus:— "There were other Presiding Officers besides Audh Saran Misra who committed similar irregularities about utilising ballot papers allotted to one polling station in the other" (i.e. in other polling stations). It is quite possible that in other polling stations as well there might have been similar non-compliance with the rules. But we cannot come to a definite conclusion in the absence of positive evidence which was not placed before us.

45. We would have been loth to conclude that the result of the election had materially been affected, if there were technical stray lapses or infringement of rules on the part of the Presiding Officer. In this case it has been proved that

there was a flagrant breach of vital rules regulating the proceedings of Presiding Officers on a large scale. We are, therefore, constrained to hold that the result of this election has been materially affected by non-compliance with the rules relating to the election, as indicated above. That being so, we declare the whole election in this plural constituency to be wholly void.

46. In the result the election petition is allowed. This result is due to non-compliance with the rules on the part of the Presiding Officers and others and, therefore, it is ordered that the parties shall bear their own cost.

In this case Shri N. N. Mukarji, Shri B. C. Dey, Shri Manmohan Lal Srivastava advocates and Shri Vaman Gopal pleader appeared for the petitioners and Shri A. P. Pandey, Shri S. K. Srivastava Advocates, and Shri Harish Kumar Srivastava pleader for respondent No. 1.

*Announced.*

*The 18th June 1953.*

(Sd.) E. MUKARJI, *Chairman.*

(Sd.) U. S. PRASAD, *Member.*

(Sd.) G. L. SRIVASTAVA, *Member.*

[No. 19/304/52-Elec.III/10540.]

*By Order,*

P R KRISHNAMURTHY, *Asstt. Secy.*